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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.33 of 1996

A.K.Parvathambal .... Appellant/Plaintiff

vs.

1. Dy. Commissioner
H.R. & C.E., Admn., Department,
Coimbatore.

2. The Commissioner
H.R. & C.E., Admn., Department,
Madras.

3. Sri Venugopalaswamy Temple
rep. by its Executive Officer
(The Executive Officer
Sri Villingiri Andavar Temple)
Killigoundanpalayam P.O.,
Coimbatore T.K. .... Respondents/Defendants

Appeal filed against the Judgment and Decree dated 29.09.1995 made in O.S.No.13 of 1989 on the file of the Principal Sub Judge, Coimbatore.

For Appellant : Mr.W.C.Thiruvengadam

For Respondents : Mr.M.R.Murugesan, Spl.G.P.
H.R.& C.E., for R1 and R2

Mr.R.T.Doraisami for R3

JUDGMENT

Aggrieved by the Judgment and Decree, dated 29.09.1985 made in O.S.No.13 of 1989 on the file of the Principal Subordinate Judge, Coimbatore, the plaintiff in the suit has preferred this appeal.

2. It is seen that the suit was filed seeking to declare that Sri Venugopalasamy Temple, situated in Kaliyagoundampalayam, Coimbatore Taluk is not a religious institution within the purview of Act 22 of 1959 and to set aside the orders passed by the second respondent / D2 and for consequential injunction and other relief.

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3. Considering the oral and documentary evidence available on record, the trial court has dismissed the suit. Aggrieved by which, this appeal has been preferred by the plaintiff in the suit.

4. Mr.W.C.Thiruvengadam, learned counsel appearing for the appellant would contend that the trial court has not considered the stand taken by the appellant / plaintiff and scope of the suit, as per Section 63 (a) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (herein after referred to as the Act), to determine the private character of the said temple.

5. It is not in dispute that the appellant was declared as Hereditary trustee of the said temple in question, as per Section 63 (b) of the Act. The appellant herein had filed an application in R.C.No.2928 of 1984 before the first respondent to declare that Sri Venugopalasamy temple is not a religious institution, as per Section 63 (a) and also as defined in Section 6 (18) r/w Section 6 (20) of the Act. As the application was dismissed by the first respondent, Deputy Commissioner, HR & CE, the appellant preferred an appeal in A.P.No.49 of 1984, which was also dismissed by the second respondent, by his order, dated 11.08.1998, which reads as follows :

> " The appellant, having acquiesced to the previous proceedings, which have become final in law, cannot now raise a new plea to the effect that the temple is not a 'Religious Institution' as defined in Section 6 (18) read with Section 6 (20) of the Tamil Nadu H.R. & C.E. Act 22 of 1959. Therefore, the appellant is estopped to raise the issue especially when the appellant was a party in the Scheme Proceedings in O.A.64/1975 before the Deputy Commissioner, which was also an alternative prayer under the Tamil Nadu H.R. & C.E. Act 22 of 1959."

6. Aggrieved by the said order, the appellant herein filed the suit before the trial court under Section 70 of Tamil Nadu H.R. & C.E. Act. The trial court has held that since the relief sought for under Section 63 (b) of the Act was already granted, holding that the appellant as Hereditary trustee, the appellant is not entitled to the relief claimed under Section 63 (a) of the Act. As per the findings of the court below, since alternative prayer sought for was already granted, the other prayer would not be available for the appellant herein and accordingly, the appeal is dismissed by the court below. It is seen that the trial court has also gone into the question of facts, based on evidence while rejecting the claim of the appellant.

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7. Mr.W.C.Thiruvengadam, learned counsel appearing for the appellant contended that the relief already granted under Section 63 (b) of the Act would not preclude the appellant from seeking relief under Section 63 (a) of the Act and in support of his contention, he relied on the following decisions :

1. P.Kathavan Servai vs. Rahima Beevi and others, 1989 TLNJ 65
2. Somasundaram Chetty vs. Ganga Bai Ammal, 1975 MLJ 152
3. H.R. & C.E (Admn) Department vs. Kanniappa Naicker, 1989 MLJ 522
4. Commr. Of Hindu Religious Endowments vs. B.Samitra, 1976 (2) SCC 277

8. In the decision, P.Kathavan Servai vs. Rahima Beevi and others, reported in 1989 TLNJ 65, the Full Bench of this Court has held as follows :

> " The alternative reliefs would include the refund of any earnest money or deposit paid or made by the plaintiff. The grant of the alternative relief would arise only in case the plaintiff's claim for specific performance is refused. When the plaintiff asks for the alternative relief, there is no legal presumption or assumption that he gives up the main or primary relief of specific performance of the contract. The plaintiff primarily wants the relief of specific performance of contract and pleads that in case that primary relief is to be refused he should be granted the alternative relief. It does not mean that when the primary relief is denied to the plaintiff, he could not be stated to be an aggrieved person in respect of the decree of the first court, denying him that relief on the reasoning that he has obtained the alternative relief."

9. In Somasundaram Chetty vs. Ganga Bai Ammal, reported in 1975 MLJ 152, this Court has held that the principle of res judicata could not be invoked so as to bar the petition filed under Section 63 (a) and (b) of the Act, 1959 for a declaration that the suit temple was a public temple inasmuch as in the earlier petition the petitioner therein had not impleaded anybody as a party and there was no scope or occasion for anybody else contesting the case of the petitioner at that stage.

10. In the decision, H.R. & C.E (Admn) Department vs. Kanniappa Naicker, reported in 1989 MLJ 522, the Division Bench of this Court, while dealing with the alternative relief under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, has held that there is no indication in Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959,

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that one or the other of the relief could be asked for only in the alternative and even if asked for in the alternative, the party who obtains either of the alternative reliefs could not express a further grievance with reference to the other relief or reliefs which though claimed by him was denied to him. It has been further held that it must be taken to be settled that even when the plaintiff asked for alternative reliefs and that there is no legal presumption or assumption that having obtained one of the alternative reliefs, he gives up the main or the primary or the other relief and he must be satisfied with what he has got as alternative reliefs asked for by him. In other words, it does not mean that when the main or the primary or the other relief is denied to him, he could not be stated to be an aggrieved person of such denial, on the ground that he has obtained the alternative relief.

11. Per contra, Mr.M.R.Murugesan, the learned Special Government Pleader appearing for H.R. & C.E., the respondents 1 and 2 and Mr.R.T.Doraisami, learned counsel appearing for the third respondent contended that the institution in question was declared as public temple in the earlier Proceedings in O.A.17/60, in which, the appellant was the petitioner and against the order, appeal was preferred before the Subordinate Judge in O.A.No.135/63 and then A.S.No.775 of 1967 before this Court. According to them, the appellant herein has not agitated the declaration of the suit temple as public temple and that she had accepted to frame a scheme under Section 64 (1) of the Act, for proper administration of the temple and therefore, the appellant cannot raise this plea stating that the suit temple is not a religious institution before this Court, since the same is already decided by this Court. In support of their contention, they have relied on the decision, The Commissioner H.R. & C.E., vs. Arulmighu Arasadi Karpaga Vinayagar Temple, reported in 2003 (3) CTC 607, wherein the Division Bench of this Court has held that in view of the character of the temple having been decided in the earlier suit, the subsequent claim that it is a private temple would be barred by the principle of res judicata.

12. It is relevant to refer to Section 63 (a) & (b) of the Act, 1959, which reads as follows :

> " 63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters - Subject to the rights of the suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall have power to inquire into and decide the following disputes and matters : -
> (a) whether an institution is a religious institution ;

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(b) Whether a trustee holds or held office as a hereditary trustee."

13. The Division Bench of this Court in the decision reported in 1989 MLJ 522 (cited supra), has categorically held that there is no legal bar in seeking the relief under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, on the ground of alternative relief granted already and to hold that the party seeking the relief had already given up the main or the primary relief that was available under the Act. Further, the relief under Section 63 (a) relates to the question of determining whether a particular institution is a Religious Institution or not, whereas Section 63 (b) of the Act deals with the question, whether the trustee holds or held office as a hereditary trustee or not and therefore, both the relief or any one of the reliefs in the alternatice can be sought for. Merely because one relief was granted, it would not preclude the person claiming the other relief, on the ground that alternative relief was already granted.

14. In the instant case, it is not in dispute that as per the earlier proceedings relating to recognition of right of the appellant, to hold the office as hereditary trustee of the temple, scheme (O.A.No.64/1975) was framed by the Deputy Commissioner, the first respondent, on the directions of the Supreme Court, the said fact is available in the order, dated 11.08.1988 passed in A.P.No.49/84 by the second respondent herein and the same is not in dispute. Admittedly, the matter went up to the Supreme Court to decide the rights of the parties to the proceedings under the provisions of the Act.

15. In the aforesaid order marked as Ex.A.1, it has been stated that the appellant without impleading necessary parties to the application has filed once again an application under Section 63 (a) of the Act to decide the nature of the temple. Admittedly, the said parties to the earlier proceedings were not arrayed as defendants in the suit, for the reasons best known to the appellant. It is seen that the appellant as P.W.1 has deposed in her evidence before the trial court that one Vaithama Gounder was the founder of the temple and he had constructed the superstructure for the temple in his garden land and also performed poojas for the deity and after his demise, his daughter Smt.Ramathal erected gopuram for the temple and also performed poojas in the temple and died in the year 1952. Admittedly, the appellant is not the direct legal heir of the said Smt. Ramathal. According to the appellant, Smt. Ramathal died issueless, but had adopted the husband of the appellant, Krishnasamy Gounder, for which the appellant has not produced any legally acceptable evidence. According to the appellant, in the year 1958, her husband, Krishnasamy Gounder died and she became the legal heir of her husband. Even if the appellant could have been the sole legal heir of her husband Krishnasamy

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Gounder, without establishing that her husband had been the adopted son of Smt. Ramathal, she cannot maintain her plea of absolute right to the temple in question.

16. The appellant herein as P.W.1 has admitted that she is claiming the right only as per the Will, dated 09.06.1946 said to have been executed by Smt. Ramathal in favour of her husband, Krishnasamy Gounder, but admittedly no such Will has been produced and marked as document before the trial court for the reason best known to the appellant. At one place of her evidence, she would state that she produced the Will, but as per the plaint, the said Will, alleged by her, dated 09.06.1946 was not even produced. Even, as per the judgment of the trial court, it is seen that neither she had produced any Will nor marked it as a document before the trial court, though the appellant has claimed right only through an alleged Will under Section 63 (a) of the Act to declare that it is her private temple. It is quite clear that there is no prima facie material available in this case to show that the suit temple is a private temple belongs to the appellant herein.

17. Mr.W.C.Thiruvengadam, learned counsel appearing for the appellant would contend that the question has not been decided in the earlier proceedings, whether the temple is a private temple or public temple and therefore, the relief sought for by the appellant would not be affected by principles of res judicata.

18. In Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Section 6 (18) deals with the definition of religious institution, the same has been amended as per Tamil Nadu Act 10 of 2003, which reads as follows :

> " 6 (18) "religious institutions" means a math, temple or specific endowment and includes, -
> (i) a samadhi or brindhavan; or
> (ii) any other institution established or maintained for a religious purpose."

As per this amendment, math, temple or specific endowments would come under the definition of "religious institutions", which includes samadhi or brindhavan or any other institution established or maintained for a religious purpose. As per this amendment, even the aforesaid institutions have acquired the status of religious institution. In order to bring those institutions under the control of Hindu Religious and Charitable Endowments Department, the Government have decided to include the places of samadhi, brindhavan and other institutions established or maintained for religious purpose. Here, in the instant case, P.W.1 has admitted that for about 40 to 60 acres of land had been left by the founder Vaithama Gounder and his daughter Smt. Ramathal to perform the charitable endowment. Admittedly,it is a huge property available to maintain the suit temple and perform pooja. Therefore, as amended by Tamil Nadu Act 10 of 2003, under Section 6 (18) of

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the Act, the said temple having a huge property for its maintenance would certainly come under the purview of the religious institution in the absence of any direct legal heir. The earlier decisions referred to by the learned counsel appearing for the appellant are not applicable in view of the aforesaid subsequent amendment in the year 2003.

19. As contended by Mr.M.R.Murugesan, the learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.R.T.Doraisami, learned counsel appearing for the third respondent, it is seen that the trial court has given a detailed finding at paragraph 13 and 15 of the impugned judgment, on the question of facts and held that the appellant / plaintiff could not claim any right under Section 63 (a) of the Act.

20. As found by the court below, it is seen that the appellant has admitted that she did not know who had originally constructed the superstructure of the suit temple and also maintained the same by performing poojas. She has not produced any document to show that the suit temple is a private temple belongs to her or to her husband Krishnasamy Gounder. The scheme (O.S.No.64 of 1975) framed by the Deputy Commissioner on the directions of the Apex Court and other connected records relating to the temple were not produced by the appellant, apart from the alleged Will, through which the appellant is seeking the relief of declaration to declare that the temple as a non-religious institution, as per Section 63 (a) of the Act.

21. Learned counsel appearing for the appellant submitted that the appeal be allowed and remitted back to the trial court for fresh disposal. However, in the facts and circumstances, I am of the view that there is no necessity to allow this appeal and to set aside the impugned judgment and decree, so as to remit back the matter to the trial court for fresh consideration, since there is no prima facie evidence or material available in favour of the appellant in this appeal.

22. It is a settled proposition of law that an appeal would not be allowed and remitted back to the trial court, unless any point for determination or issue has to be decided by the trial court. In the instant case, there is no legally acceptable evidence to show that the husband of the appellant, Krishnasamy Gounder was the legal heir of Smt. Ramathal. The parties to the earlier proceedings were not arrayed as parties to the suit, which could be construed as non-joinder of necessary parties. The respondents have stated in their written statement itself in O.A.No.17/60 that the suit temple was declared as a public temple coming under the purview of the Act. As found by the court below, even without prima facie evidence and materials, the appellant has claimed right, it is a private temple belongs to her, in spite of the fact that scheme in O.A.No.64/1975 was framed by the first respondent on the

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directions of the Apex Court, as stated in Ex.A.1. and hence, the claim of the appellant is not legally sustainable. In the aforesaid circumstances, I could find no illegality or infirmity in the impugned judgment and decree passed by the court below to interfere with the same.

23. In the result, I hold that the appeal is liable to be dismissed, confirming the judgment and decree passed by the trial court. The appeal is dismissed. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

The Principal Sub Judge, Coimbatore

one cc to Mr.R.T.Doraisamy, advocate SR.No.68490

one cc to Govt., Pleader SR.No.68447

one cc to Mr.C.thiruvengada, advocate SR.No.68281

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